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Recordkeeping and Reporting in an Attempt to Stop the Money Laundering Cycle: Why Blanket Recording and Reporting of Wire and Electronic Funds Transfers is Not the Answer

Without the ability to freely utilize its ill-gotten gains, the underworld will have been dealt a crippling blow.

—Irving R. Kaufman¹

In 1984, the President's Commission on Organized Crime drew attention to large-scale "money laundering"² operations that criminal organizations had used to disguise the amount and source of their illegally-gained profits.³ The Commission's report suggested changes in the applicable federal law, in an effort to make more costly and difficult the process of disguising and concealing illegally earned cash.⁴ Until the Commission's report, law enforcement efforts to detect and control money laundering relied mainly on provisions of the Bank Secrecy Act.⁵ The Act imposed requirements on banks to report their customers' transactions, when these transactions involved large amounts of cash.⁶ Banks' compliance with the reporting requirements was lax, however, and money laundering itself, as opposed to failure to file the required reports, was not a crime. Spurred by the Commission report's revelations about the size of the sums being

1 PRESIDENT'S COMMISSION ON ORGANIZED CRIME, INTERIM REPORT TO THE PRESIDENT AND THE ATTORNEY GENERAL, THE CASH CONNECTION: ORGANIZED CRIME, FINANCIAL INSTITUTIONS, AND MONEY LAUNDERING iii (1984). Statement of Irving R. Kaufman, Chairman of the President's Commission on Organized Crime [hereinafter THE CASH CONNECTION].

2 Money laundering is defined as "the process whereby one conceals the existence, illegal source, or illegal application of income, and then disguises that income to make it appear legitimate." *Id.* at 7. The Commission was careful to point out that corporations, as well as drug traffickers, may engage in money laundering. For example, a corporation seeking to cover the trail of bribery money paid to foreign officials will make use of laundering techniques. *Id.* at 11-12.

3 *Id.* at 10-13, 29-49.

4 *Id.* at 52-63.

5 Amendments to the Federal Deposit Insurance Act (Bank Secrecy Act), Pub L. 91-508, Titles I and II, 84 Stat. 1114-1124 (1970) (current version codified at 12 U.S.C. §§ 1730d, 1829b, 1951-1959; 18 U.S.C. § 6002; 31 U.S.C. §§ 321, 5311-5314, 5316-5322 (1988)).

6 31 U.S.C. § 5313 (1988).

"laundered," and the role money laundering plays in keeping drug trafficking and other illegal activities profitable, Congress increased the penalties for Bank Secrecy Act violations. It also made money laundering a substantive crime.⁷

Yet, evidence indicates that the money laundering business is bigger than ever.⁸ This means that drug traffickers and other criminals still have access to their recycled and disguised profits. Revelations about the scale of recently uncovered money laundering operations have impelled legislators and law enforcement officials to propose additional banking regulations to address the money laundering problem. These proposals focus on wire transfers, particularly international wire transfers,⁹ which money launderers use to quickly move funds from one domestic or international financial institution to another. The speed and relative anonymity of electronic and wire transfers¹⁰ have made the "trail" of illegally generated cash nearly impossible for law enforcement authorities to trace.

But proposals to require financial institutions to keep records and file reports on these transactions are not likely to do much to stop money launderers. The proposed regulations, like those currently in force, will require financial institutions to record, and in some cases report, detailed information about tens of thousands of individual financial transactions per day. The sheer volume of information recorded and reported means the govern-

7 Money Laundering Control Act of 1986, Subtitle M of Title I of the Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, 100 Stat. 3207 (1986) (codified as amended throughout 18 U.S.C. and 31 U.S.C.).

8 See, e.g., *infra* notes 23-24.

9 Electronic and wire transfers can move funds in a matter of seconds, because what is being "moved" is not physical currency, but messages. An authority on electronic funds transfer has noted:

Money itself is nothing but information. It represents the claims that individuals and institutions have for goods and services that exist within an economy. The possession of money in any paper form is simply the possession of a certificate which records these particular claims. The movement of money is the movement of these claims through the accounting records of the financial, industrial, and merchandising communities. That's the essential meaning of electronic funds transfer.

D. CHORAFAS, ELECTRONIC FUNDS TRANSFER 142 (1988).

In April, 1989, Donald G. Ogilvie, vice president of the American Bankers Association, wrote to William J. Bennett, then-director of the Office of National Drug Control Policy, stating: "Wire transfers . . . have emerged as the primary method by which high-volume launderers ply their trade." Cox, *New Path for Money Laundering*, AMERICAN BANKER, July 24, 1989, at 9.

10 See *infra* notes 34 and 35 and accompanying text.

ment will probably never scrutinize, much less use, most of the data in order to detect money laundering. A more effective approach to inhibiting the movement of illegal-source money would be to encourage banks to know their customers, to provide banks with profiles of potentially suspicious transactions so that banks can alert the government to such activity, and to combine these policies with the use of undercover investigations and informants' tips, in order to unearth money laundering operations. The government should limit mandatory recordkeeping of wire and electronic funds transfers, so that banks do not have to maintain records that will be of little or no use to law enforcement. The government should not yield to the temptation to require routine reporting, as well as recording, of international wire and electronic funds transfers. Routine reporting has proven ineffective in the currency transaction context; applying it to wire and electronic transfers would be to persist in a law enforcement tactic that has proven ineffective, and to ask that private financial institutions, and their customers, subsidize most of the tactic's tremendous costs.

Part I of this Note provides an overview of the money laundering problem and law enforcement officials' concerns about it. Part II describes a recently uncovered money laundering operation that operated for three years despite its compliance with reporting regulations that aim to prevent and detect money laundering. Part III outlines the current regulatory scheme. Part IV examines the Treasury Department's recent proposals to impose blanket recording, and possibly reporting, requirements on transactions conducted with wire transfers. These proposed requirements are similar to those that currently apply to cash and currency transactions. Part V concludes that the government should limit such recordkeeping requirements, and resist the temptation to require routine reporting of wire and electronic funds transfers.

I. THE MONEY LAUNDERING PROBLEM

Activities such as drug trafficking, gambling, extortion, bribery, loansharking and prostitution generate large amounts of cash.¹¹ Cash has two virtues, from the criminal's point of view. It

11 Commentators have noted the irony of the fact that while checking accounts and credit cards have replaced cash as the preferred medium of payment in most American

is a readily acceptable medium of exchange in illegal dealings, and it is difficult to trace. But it also has less desirable attributes. Illegal-source cash can be difficult to handle due to its sheer physical volume, particularly with large amounts of cash in small denominations. In addition, criminals need to use their funds without attracting suspicion as to their source. This is why "laundering" illegally generated cash is so important to the success of large-scale criminal enterprises.

Criminal organizations accomplish much of their "laundering" through financial institutions.¹² Actual money laundering techniques can be very simple, such as exchanging cash for cashier's checks, or very complex.¹³ Those wanting to launder money often employ financial transactions that are no different from trans-

consumer transactions, cash has assumed an ever-greater importance as the medium of exchange in illegal transactions, such as drug dealing. See, e.g., Rusch, *Hue and Cry in the Counting House: Some Observations on the Bank Secrecy Act*, 37 CATH. U. L. REV. 465 (1988). For example, in the period from 1984 to 1986, around 89% of the total \$177.4 billion of coin and currency in circulation outside banks was "apparently held in unreported hoards, 'underground' for illegal purposes, or offshore." *Changes in the Use of Transaction Accounts and Cash from 1984 to 1986*, 73 FED. RES. BULL. 179, 191 (1987).

There is no consensus estimate of the amount of money involved in drug trafficking in the United States. David Wilson, the chief of the financial operations section of the United States Drug Enforcement Administration (DEA) has observed:

It's like those black holes the astronomers tell us about. They don't emit any light, so the astronomers presume they exist because of the way the celestial bodies around them react. We look at the money in the drug business in much the same way. We know it's out there, and we know it's quite big, but how big is it? It doesn't really emit a whole lot of light, so we don't really know.

Cook, *The Paradox of Antidrug Enforcement*, FORBES, Nov. 13, 1989, at 105, 106. Even different government agencies arrive at different figures, ranging from \$25 billion per year to \$110 billion per year. *Id.*

12 Launderers often use financial institutions that have their headquarters or branches in foreign jurisdictions. They choose particular foreign jurisdictions on the basis of their bank secrecy laws. These laws typically favor the privacy of the account owner over the law enforcement interest of other sovereignties that try to obtain access to banking records. The convenience of "offshore" banking is enhanced by the fact that many jurisdictions allow funds to be held in the currency of the deposit-holder's choice. See generally E. CHAMBOST, *BANK ACCOUNTS: A WORLD GUIDE TO CONFIDENTIALITY* (1983).

For further discussion of foreign bank secrecy laws and the United States' attempts to exercise extraterritorial jurisdiction over funds held abroad, see Harfield & Deming, *Extraterritorial Imperatives*, 20 CASE W. RES. J. INT'L L. 393 (1988); O'Donnell, *The Secrets of Foreign Bankers and the Federal Investigation: Tottering Balances*, 20 CASE W. RES. J. INT'L L. 509 (1988); Note, *Court-ordered Violations of Foreign Bank Secrecy and Blocking Laws: Solving the Extraterritorial Dilemma*, 1988 U. ILL. L. REV. 563; Note, *Extraterritorial Jurisdiction and International Banking: A Conflict of Interests*, 43 U. MIAMI L. REV. 449 (1988). For an example of a non-American perspective on the extraterritoriality problem, see Ellinger, *Extraterritorial Aspects of Bank Secrecy*, 1985 J. BUS.L. (England) 439.

13 See *infra* notes 23-27 and accompanying text. See also *infra* note 98.

actions associated with legitimate commercial or personal financial activity.¹⁴ What makes particular transactions unlawful is the illegal source of the cash, and the motive to conceal the illegal source or the true ownership of the funds.¹⁵ Thus, to identify what is in fact a money laundering operation, one must associate the funds involved, or the person controlling, depositing, or transferring those funds, with some particular illegal activity. The statutory and regulatory scheme that targets money laundering aims to alert law enforcement agencies¹⁶ to suspicious transactions that may form a part of this illegal activity. But, despite this web of regulations, drug traffickers and others are still laundering illegal-source cash.¹⁷

II. LA MINA: REPORTING THE CASH AND LAUNDERING IT TOO

The current regulatory attempts to prevent money laundering leave wide gaps in which imaginative money launderers can operate. Their options include evasive structuring of transactions,¹⁸ bribing a bank teller or bank official, so that no reports are ever filed;¹⁹ getting an exemption from the reporting requirement, as

14 Such transactions include purchasing cashier's checks or traveler's checks, or conducting wire transfers between ostensibly legitimate businesses that are actually "fronts" for criminal organizations.

15 18 U.S.C. § 1956 (1988). Section 1956 creates two substantive offenses. One is conducting financial transactions involving illegally generated funds, with the intent to promote "specified unlawful activity," or with the intent to evade certain Internal Revenue Code provisions; or knowing that the transaction is designed to conceal the source, nature, ownership or location of the proceeds of specified unlawful activity. 18 U.S.C.A. § 1956(a)(1). The second offense is transporting or transferring monetary instruments or funds into, out of, or through the United States with such intent or knowledge. 18 U.S.C.A. § 1956(a)(2). In addition, 18 U.S.C. § 1957 prohibits engaging in monetary transactions in criminally derived property of a value greater than \$10,000. See Plombeck, *Confidentiality and Disclosure: The Money Laundering Control Act of 1986 and Banking Secrecy*, 22 INT'L LAW. 69 (1988) for an analysis of these statutes, including their scienter requirements.

16 18 U.S.C. §§ 1956(e) and 1957(e), the statutes that define money laundering as a substantive crime, provide that the Justice Department, the Department of the Treasury, and, to the extent that it has jurisdiction, the Postal Service, may investigate money laundering violations. The Treasury Department has jurisdiction and enforcement authority over the currency and transaction reporting rules, which it promulgates under the authority of 31 U.S.C. §§ 5311-5314, 5316-5322 (1988).

17 See *infra* notes 21 and 22.

18 See *infra* notes 85-105 and accompanying text for a discussion of evasive structuring of transactions.

19 Eduardo Orozco, who laundered \$151 million in drug cash through New York financial institutions over a four-year period, made use of a Citibank "insider" in this way.

the regulations themselves allow;²⁰ or creating "shell" corporations, or other fictitious entities to receive transfers of cash deposits.²¹ If the launderer uses this last technique, even if the financial institution that initially handles the cash files a currency transaction report (CTR) covering the transaction, the report will not yield any information useful to the authorities.²²

The "La Mina" money laundering operation provides an example of how money launderers can comply with all the reporting requirements and still carry on their business unimpeded.²³ The federal government began unraveling La Mina's operation in 1988, in an investigation dubbed "Operation Polar Cap." The Colombian drug traffickers whose profits La Mina ("the mine") laundered had named their operation aptly. Over the course of its three-year operation, from 1986 to 1989, La Mina laundered over \$1.2 billion for leaders of the Medellin cocaine cartel. One federal investigator commented: "It was an amazing operation. It taught me a whole lot I never knew about how money moves, how the world really works. La Mina literally dragged me into the 20th century."²⁴

La Mina operated in the Los Angeles jewelry district. Two "front" firms located there, Ropex, and Andonian Brothers, took in cash from street-level narcotics sales in New York, Miami, Houston, Phoenix, and Los Angeles. "Jewelry stores" in these cities shipped the cash to Ropex and Andonian Brothers, via commercial and armored couriers, in boxes marked "gold scrap." Ropex and Andonian Brothers, which posed as gold dealers, then deposited the cash into accounts they each had established at local banks. From there, they wired the funds to Manhattan banks. From Manhattan, they wired the funds to Panama, and

The "insider" was actually an undercover DEA agent investigating Orozco's financial affairs. After Orozco was arrested and convicted in 1983 for conspiracy, the President's Commission on Organized Crime featured details of Orozco's money laundering operation in its 1984 Report. *THE CASH CONNECTION*, *supra* note 1, at 35-39. Testimony on Orozco's money laundering operation is also featured prominently in the Commission's March 14, 1984 Hearings on the money laundering problem. This testimony took up seventy pages of the 189-page record. *See PRESIDENT'S COMMISSION ON ORGANIZED CRIME, RECORD OF HEARING: ORGANIZED CRIME AND MONEY LAUNDERING* 71-142 (1984).

20 *See* 31 C.F.R. §§ 103.22(b)(2), 103.26(3) (1990). *See also infra* text accompanying notes 73-74.

21 *See, e.g.*, Beaty & Hornik, *A Torrent of Dirty Dollars*, *TIME*, Dec. 18, 1989, at 50.

22 *Id.* *See also*, Maxwell, *Gold, Drugs and Clean Cash*, *L.A. Times*, Feb. 18, 1990, (Magazine), at 10.

23 *See generally Id.*

24 *Id.* at 12.

eventually to South America. There, cartel leaders used some of the money to pay for raw materials of the drug trade, and wired the rest to European bank accounts.²⁵

Thus, where the cash initially entered the domestic banking system, it did so in the form of deposits by ostensibly legitimate businesses. Ropex and Andonian Brothers told bankers that the cash they deposited represented the profits from the sale of gold to investors and jewelry makers.²⁶ Their explanation for conducting their business in cash rather than in bank checks was that they wanted to avoid being hurt by sudden swings in spot-market precious metals prices.²⁷ The CTRs that Ropex and Andonian Brothers filed reflected their false identity as gold dealers, and their false version of the source of the cash.

Thus, it was not information gleaned from CTRs that alerted federal law enforcement authorities to the possibility of illegal activity. Instead, the FBI and IRS received information about suspicious activity from an employee of an armored courier company,²⁸ and from the senior vice-president of Wells Fargo Bank in Los Angeles, where Andonian Brothers opened an account. Andonian Brothers' deposits reached \$25 million in the first three months their account was open, in early 1988. The Wells Fargo Bank officer thought this was unusual even for an international gold brokerage, ordered an internal investigation, and eventually notified the IRS.²⁹ Had it not been for these tips, which both came from individuals close to the "ground floor" of La Mina's laundering operation, La Mina might still be doing business.³⁰

25 An alternative technique was to ship gold-coated bars of lead from Uruguay, to businesses in the United States that posed as refineries. Then, drug money from the United States was wire transferred to Uruguay, ostensibly as "payment" for the gold. *Id.* at 16-17.

26 *Id.* at 12. Of course, other "covers" for would-be launderers are available. Eduardo Orozco posed as a coffee broker; he also opened an account in the name of "Calypso Travel Agency." See *supra* note 19; see also THE CASH CONNECTION, *supra* note 1, at 36, 38.

27 Maxwell, *supra* note 22, at 16.

28 *Id.* at 10. An employee of Loomis Armored Transport Co. noticed a tear in a box that was part of a nightly shipment from a United Parcel Service aircraft. Shipping documents said the box contained "gold scrap," being shipped from a New York jewelry store to a Los Angeles gold dealer, Ropex. But the courier company employee could see stacks of currency through the tear in the box, and gave this information to the FBI.

29 *Id.* at 12. See also Leven, *Wells Pioneers Detection System*, AMERICAN BANKER, July 24, 1989, at 17.

30 A DEA investigation that was underway in Atlanta at the time the government received the tips from Los Angeles eventually pointed to La Mina, as well, but there was

Some Los Angeles banks, like Wells Fargo, became suspicious of the Ropex and Andonian Brothers explanations of the source of their cash, and refused to handle it, but other banks accepted the deposits.³¹ Since these deposits totaled hundreds of millions of dollars, the banks' economic incentive to accept them was considerable.

Although the La Mina operation was unusual in its scale³² and in the wide publicity it received after being uncovered,³³ it had characteristics in common with other large money laundering operations. A key similarity was the use of electronic and wire transfers to move the cash after its initial deposit in Wells Fargo and other domestic banks. The speed³⁴ and relative anonymity³⁵ of electronic transfers make them very attractive to money launderers.

Of course, this speed and convenience are also important to legitimate businesses, especially those that operate internationally. The volume and dollar amounts of wire transfers that banks and bank clearinghouses in the United States handle each day are tre-

no indication of the connection between the Atlanta investigation and the Los Angeles money laundering operation at the time the FBI and IRS received the tips about Ropex and Andonian Brothers. See Maxwell, *supra* note 22, at 14.

31 Even Justice Department prosecutors who were working with the Operation Polar Cap task force reportedly believed that the spot market explanation was sufficiently plausible "on the surface" to raise "reasonable doubt" in a courtroom, leading to the launderers' acquittal. In order to gather money laundering evidence, agents began to "track" the Ropex and Andonian Brothers cash by checking bank records of electronic wire transfers. *Id.* at 16.

32 Richard Lind, then chief of money laundering investigations for the FBI, said La Mina was "the biggest laundering operation we've ever seen." *Id.* at 12.

33 See, e.g., Beaty & Hornik, *supra* note 21; Maxwell, *supra* note 22.

34 Once funds are deposited in a bank, they can be transferred across the world in seconds. Chase Manhattan Bank, which handles about 55,000 financial network messages per day in New York, guarantees execution of all certified telexes one hour after reception. The one-hour period gives Chase's employees the time they may need to check the financial message with the originating financial institution, and to ask for any necessary confirmations. See D. Chorafas, *supra* note 9, at 115.

At one time during its operation, La Mina exported \$28 million in a forty-five day period. One of La Mina's leaders bragged to an undercover agent that La Mina could deliver laundered cash from the United States to Panama in forty-eight hours. Maxwell, *supra* note 22, at 14.

35 A bank customer can instruct her home computer to tell her bank's computer to take money out of her account and send it to another account in a foreign bank. The bank computer then tells a bank clearinghouse to send the customer's money to the account abroad. No person ever talks to another in most of these foreign transactions. Labaton, *Banking's Technology Helps Drug Dealers Export Cash . . .*, N.Y. Times, Aug. 14, 1989, at A1, col. 1. Banking through computer and telephone lines will likely become increasingly prevalent. See D. Chorafas, *supra* note 9, at 141-43.

mendous. Most of these wire transfers represent legitimate business transactions.³⁶

The volume and speed of wire transfers not only make moving money from bank to bank, domestically or internationally, easy, it also makes tracing these funds very difficult. This realization has led to calls for yet more record-keeping and reporting laws, to apply to wire or electronic funds transfers. Such new laws would add to an already complex and burdensome array of regulations.

III. THE CURRENT MANDATORY REPORTING SCHEME

The centerpiece of the current law is a set of transaction reporting requirements. These requirements collectively comprise the Currency and Foreign Transactions Reporting Act,³⁷ more frequently referred to as the Bank Secrecy Act, or BSA. Regulations under the BSA³⁸ cover transactions in, and transportation of, large amounts of currency. Additional "targeted" regulations under the BSA cover transactions with foreign financial institutions, or transactions that take place in a specified geographic area of the United States.³⁹ A further set of reporting regulations applies to the purchase of instruments such as bank checks

36 An officer of Citibank in New York is quoted as saying that her bank handles 40,000 wire transfers each day, and the average transfer totals \$3 million. She states that the "vast majority" of these wire transfers represent legitimate transactions. Isikoff, *Treasury Weighs Banking Rule to Track Drug Profits Abroad*, Wash. Post, Nov. 1, 1989, at A6, col. 1.

More than \$1 trillion per day moves through bank clearinghouses in the United States. The average transfer is \$5 million. Labaton, *Treasury Offers Proposals Aimed at Drug Laundering*, N.Y. Times, Oct. 31, 1989, D1, col. 1. The president and chief executive officer of the New York Clearinghouse, which moves an average of about \$700 million each day through its computer system, notes that about 83% of the clearinghouse's customers have a "regular relationship" with their banks. *Id.* Such a "regular relationship" is regarded as an indication that the customer's business is legitimate.

One major bank's comments illustrate the banks' and in turn their customers' reliance on efficient electronic funds transfers. The bank stated that if the financial network's equipment is out of order for just one day, the interest lost on the accounts at one regional processing center amounts to \$50,000. See D. Chorafas, *supra* note 9, at 115.

37 31 U.S.C. §§ 321, 5311-5314, 5316-5322 (1988). For a citation to the current version of the Bank Secrecy Act in its entirety, see *supra* note 5.

38 31 C.F.R. § 103 (1990).

39 31 C.F.R. § 103.25 (1990) permits the Secretary of the Treasury to require reports on transactions with foreign financial agencies; 31 C.F.R. § 103.26 (1990) permits geographic targeting. See *infra* notes 50-70 and accompanying text for discussion of the targeting regulations.

or traveler's checks.⁴⁰

All these regulations require detailed information on each covered transaction. Penalties for non-compliance with the reporting requirements are stiff. Evidence indicates that the government can hardly keep up with the large number of reports banks file in compliance with the regulations. Yet, large-scale money laundering operations like La Mina still operate successfully, for long periods of time, even when they comply with the reporting regulations.

A. Currency Transactions and Transportation of Currency

Currency transaction regulations require that financial institutions⁴¹ file reports on currency transactions⁴² of amounts over \$10,000.⁴³ Financial institutions must file these currency transac-

40 31 C.F.R. § 103.29 (1990).

41 The regulations define "financial institution:"

(i) Financial institution. Each agent, agency, branch, or office within the United States of any person doing business, whether or not on a regular basis or as an organized business concern, in one or more of the capacities listed below:

(1) A bank (except bank credit card systems);

(2) A broker or dealer in securities;

(3) A currency dealer or exchanger, including a person engaged in the business of a check casher;

(4) An issuer, seller, or redeemer of traveler's checks or money orders, except as a selling agent exclusively who does not sell more than \$150,000 of such instruments within any given 30-day period;

(5) A licensed transmitter of funds, or other person engaged in the business of transmitting funds;

(6) A telegraph company;

(7)(i) A casino or gambling casino licensed as a casino or gambling casino by a State or local government and having gross annual gaming revenue in excess of \$1,000,000.

(ii) A casino or gambling casino includes the principal headquarters and any branch or place of business of the casino or gambling casino.

(8) A person subject to supervision by any state or federal bank supervisory authority;

(9) The United States Postal Service with respect to the sale of money orders.

31 C.F.R. § 103.11(i) (1990).

42 A "transaction in currency" is defined as:

A transaction involving the physical transfer of currency from one person to another. A transaction which is a transfer of funds by means of bank check, bank draft, wire transfer, or other written order, and which does not include the physical transfer of currency is not a transaction in currency within the meaning of this part.

31 C.F.R. § 103.11(r) (1990).

43 31 C.F.R. § 103.22(a)(1) (1990). Casinos must also report deposits, withdrawals, exchanges of currency, gambling tokens or chips, or other transfers "by, through, or to"

tion reports with the IRS.⁴⁴ The financial institutions must provide the identity and the occupation of the individual who conducted the transaction with the financial institution, the identity of the individual on whose behalf the transactions were conducted, the "customer's account number affected by the transaction," and a description of the transaction.⁴⁵ The CTR also requires information about the particular financial institution where the transaction took place.⁴⁶

Additional Treasury regulations under the BSA scheme provide that a person who physically transports, mails, or ships⁴⁷ currency in an aggregate amount exceeding \$10,000 at one time,⁴⁸ into or out of the United States, must report details of this conduct to the IRS.⁴⁹ Such a report is a "Report of International

the casino, where a currency transaction of more than \$10,000 is involved. 31 C.F.R. § 103.22(a)(2) (1990).

44 The CTR is submitted as IRS Form 4789. The IRS Data Center in Detroit processes the forms, which banks must file within fifteen days following the reportable transaction. See 31 C.F.R. § 103.27 (1990). For a facsimile of the Form 4789, including its instructions, see Welling, *Smurfs, Money Laundering, and the Federal Criminal Law: The Crime of Structuring Transactions*, 41 U. FLA. L. REV. 287, 340-43 (1989).

45 Part IV of the CTR form requires details of the type of transaction for which the form is being filed. The filing institution must specify whether the transaction was a currency exchange (cash for cash); a deposit or withdrawal; a security purchase or redemption; a check purchase or check cashing; a CD or money market purchase or redemption; a wire transfer; or whether there had been a receipt of cash from abroad, or a shipment abroad. In addition, the form calls for the total dollar amount of the transaction; the amount that was in "\$100 bills or higher;" the date of the transaction; and the currency and country name if other than United States currency was involved. The reporting regulations apply to foreign currency, as well as United States dollars. See 31 C.F.R. §§ 103.11(e) and 103.41 (1990). If a check or a wire transfer was involved, the filing institution must list the date of the check or wire transfer; its amount; the payee; the drawer, in the case of a check; and the drawee bank.

46 The financial institution where the currency transaction took place must record the institution's "type," for example, bank, securities dealer, savings and loan, or "other." The institution must also record its name and address; and the name, title and signature of the preparer of the form, as well as the signature of the institution's "approving official." See Welling *supra* note 44, at 340-43.

47 31 C.F.R. § 103.23 (1990), and 31 U.S.C. § 5316 (1988) also apply to a person who "causes" such shipment. 31 C.F.R. § 103.23 specifies that a "person is deemed to have caused such transportation, mailing, or shipping when he aids, abets, counsels, commands, procures, or requests it to be done by a financial institution or any other person." 31 C.F.R. § 103.23(a) (1990).

48 For purposes of 31 C.F.R. § 103.23, if a person "either alone, in conjunction with or on behalf of others" transports currency totaling more than \$10,000 into or out of the United States "on one calendar day, or if for the purpose of evading the reporting requirements of § 103.23, on one or more days," such transportation is deemed to have been done "at one time." 31 C.F.R. § 103.11(a) (1990).

49 For entities and persons exempted from this reporting requirement, see 31

Transportation of Currency or Monetary Instruments" (CMIR).

B. Targeting Regulations

More flexible "targeting" regulations allow the Secretary of the Treasury to require additional, or more detailed, reports from particular areas of Treasury concern. One of these targeting regulations allows the Treasury Department to call for reports on certain transactions with foreign financial institutions.⁵⁰ The other targeting regulation⁵¹ permits the Secretary to require reports of transactions conducted with domestic financial institutions that are located in a particular geographic area.⁵² Both of these regulations give the Secretary of the Treasury broad discretion to specify exactly what financial institutions must do to comply with a particular targeted regulation.

1. Transactions with Foreign Financial Agencies

The "foreign financial agencies" provision permits the Treasury, whenever the Secretary "deems appropriate," to order domestic financial institutions to file reports on transactions with foreign financial agencies.⁵³ The Secretary can prohibit the disclosure of "the existence or provisions of that reporting requirement to the designated foreign financial agency . . . and to any other party."⁵⁴ The Secretary can define the scope of the reports re-

C.F.R. § 103.23(c) (1990).

50 31 C.F.R. § 103.25 (1990). This regulation lists seven categories of transactions that the Secretary of the Treasury may require specified financial institutions to report. The seven categories are: checks or drafts, including traveler's checks; wire or electronic fund transfers; loans to or through a foreign financial agency; commercial paper received or shipped by the financial institution; stocks received or shipped; bonds received or shipped; and certificates of deposit received or shipped. See 31 C.F.R. § 103.25(b) (1990).

51 31 C.F.R. 103.26 (1990); 31 U.S.C. § 5326 (1988).

52 "Geographic area" is broadly defined to mean

any area in one or more States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands, the territories and possessions of the United States, and/or political subdivision or subdivisions thereof.

31 C.F.R. § 103.26(d)(4) (1990).

53 31 C.F.R. § 103.25(a) (1990).

54 *Id.* Paragraph 103.25(a) of the targeting regulation also gives the Secretary of the Treasury two alternative means of promulgating a targeted regulation. The first means is to provide both notice of the new targeted requirement and opportunity for public comment on it. The alternative is to issue the new requirement as a final rule and to include with the new rule a finding of good cause for dispensing with notice and com-

quired under this regulation, as well. The Secretary's judgments determine which domestic financial institutions must comply with the particular "targeted" reporting requirement; which foreign countries the reporting requirement will encompass; what type of transactions it will cover, or, alternatively, exempt; and the dollar amounts to which the reporting requirement will apply.⁵⁵ The Secretary can also require information on transactions that occurred prior to promulgation of the targeted requirement.⁵⁶

The regulation places some generalized limitations on the Secretary's discretion to order these targeted reports.⁵⁷ It states that, when issuing reporting orders, the Secretary "shall consider" the need to avoid impeding the import or export of monetary instruments, and the need to avoid unreasonably burdening a person making a transaction with a foreign financial agency.⁵⁸ The regulation also prohibits the Secretary from issuing a targeted regulation in order to obtain individually identifiable account information, under specified circumstances.⁵⁹

2. Geographic Targeting

The "geographic targeting" regulation, 31 C.F.R. § 103.26, allows the Secretary similar discretion to define the terms of any order that the Secretary issues under this regulation's authority.⁶⁰ There are differences between sections 103.25 and 103.26, howev-

ment. This paragraph also provides that in cases where the Secretary gives actual notice of the new targeted regulation to the domestic financial institution involved, rather than following the normal course of giving notice by publishing the regulation in the Federal Register, the Secretary may prohibit disclosure of "the existence or provisions of that reporting requirement to the designated foreign financial agency or agencies and to any other party." *Id.*

55 31 C.F.R. § 103.25(c) (1990).

56 31 C.F.R. § 103.25(e)(3) (1990). The Secretary can require only reports of information that the financial institution already was obliged to maintain pursuant to Treasury regulations, state or federal law, or information that the institution maintained in the regular course of business.

57 31 C.F.R. § 103.25(e) (1990).

58 *Id.*

59 *Id.* This prohibition applies to situations where the customer "is already the subject of an ongoing investigation for possible violation of the Currency and Foreign Transactions Reporting Act, [the BSA] or is known by the Secretary to be the subject of an investigation for possible violation of other federal law." *Id.*

60 31 C.F.R. § 103.26 (1990). In addition to the dollar amount and "type" of transaction to which the targeted order will apply, the Secretary must specify the starting and ending dates by which transactions will be reported, how long the financial institution must keep the reports, and "any other information deemed necessary to carry out the purposes of the order." 31 C.F.R. § 103.26(c) (1990).

er. The text of section 103.26 seems to demand a higher level of justification for geographic targeting than the "deems appropriate" standard that section 103.25 applies to the targeting of "foreign financial agencies." To order targeted reporting under section 103.26, the Secretary must find that "reasonable grounds"⁶¹ exist for the conclusion that the additional targeted reporting is "necessary" to carry out the purposes⁶² of the reporting provisions and to "prevent persons from evading the [regulations'] recordkeeping/reporting provisions."⁶³

Section 103.26 itself does not explicitly define "reasonable grounds." Nonetheless, reasonable grounds would likely include reports of large surpluses of cash by the Federal Reserve Bank serving a particular geographic area;⁶⁴ informants' tips on the existence of a money laundering operation in a given locality;⁶⁵ or other evidence of large-scale drug trafficking or other illegal, cash-generating activity that creates a demand for money laundering services in a particular area.

61 See 31 C.F.R. § 103.26(a) (1990).

62 31 C.F.R. § 103, which sets out the BSA regulations, does not include a specific statement of its "purposes." Yet, Subpart B of the regulation, which contains the individual sections on "Reports to be Made," including § 103.26, contains the following declaration: "The Secretary hereby determines that the reports required by this subpart have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings." 31 C.F.R. § 103.21 (1990). Thus, the terms "necessary" and "purposes" in § 103.26 would probably be interpreted in light of the "determinations" set out in § 103.21.

63 31 C.F.R. § 103.26(a) (1990).

64 Law enforcement officials indicate that cash surpluses at a particular Federal Reserve Bank often indicate money laundering activity at financial institutions served by that Federal Reserve Bank. In recent years, these cash surpluses in major cities have reached enormous levels. For example, in 1985 the Federal Reserve's Los Angeles office received \$165.8 million more than it shipped to the banks it served in Southern California, Arizona, and part of Nevada. In 1987, its surplus was \$2.5 billion. A similar phenomenon in Miami indicates that that city remains a money laundering center. For 1987, the Federal Reserve Bank serving the Miami area had a cash surplus of \$5.2 billion. Frantz, *IRS Subpoenas Records of California Banks in Broad Money-Laundering Probe*, L.A. Times, Oct. 4, 1988, at D1, col. 4. Cash surpluses reported by Federal Reserve Banks in the area along the Texas-Mexico border rank third, behind those reported by Federal Reserve Banks in Miami and Los Angeles. Cash pours into the Federal Reserve Bank in San Antonio from "casas de cambio" (currency exchanges) and banks along the border. In the first ten months of 1989, this surplus had reached \$2.3 billion. A 1988 report showed that nearly 90% of a \$1.6 billion cash surplus came from banks within fifteen miles of the border. Those banks dealt extensively with currency-exchange-type businesses in the area. See Weingarten, *Drug Cash Flows Over U.S. Border*, Chicago Trib., Dec. 10, 1989, § 1, at 25, col 1.

65 See, e.g., *United States v. Varbel*, 780 F.2d 758 (9th Cir. 1986).

3. Overall Flexibility of the Targeting Regulations

Notwithstanding the generalized limitations noted above,⁶⁶ the targeting regulations, sections 103.25 and 103.26, provide the government with a flexible investigatory, and perhaps, deterrent device for inhibiting money laundering operations. The government can tailor the parameters of a reporting order to a particular geographic or foreign "target," and thereby gather information that the routine reporting requirements miss.⁶⁷ Since the government can vary the threshold dollar amount of reportable transactions from order to order, it will be more difficult for would-be money launderers to evade reporting. Prohibiting disclosure of the existence of a particular targeted order, under section 103.25, will also inhibit evasive structuring of transactions.⁶⁸ If money launderers do not know precisely which of their transactions financial institutions will record or report, they cannot easily design schemes to defeat the regulations' law enforcement purposes.

The discretion to choose particular types of transactions for reporting also means that the government can order reporting of wire or electronic funds transfers (EFTs) from particular categories of financial institutions.⁶⁹ This narrows a gap in the routine currency transaction reporting requirements, which do not apply to wire or electronic funds transfers. As this Note mentions, wire and electronic funds transfers are a particular area of concern to the government.⁷⁰

66 31 C.F.R. § 103.26 (1990) and its authorizing statute, 31 U.S.C. § 5326 (1988), also limit geographically targeted orders to a sixty-day coverage period. But the government can renew the order after the expiration of the initial sixty-day period, presumably upon a showing that "reasonable grounds" for the order still exist. 31 C.F.R. § 103.26 (d)(1) (1990). The only language in the relevant paragraph that indicates the conditions upon which renewal will be granted is the statement that an order may be renewed "pursuant to the requirements of paragraph (a)." *Id.* The text of § 103.26(a), in turn, contains no specific language pertaining to renewal; it merely states that there should be "reasonable grounds" for issuance of an order under this section.

67 See 31 C.F.R. § 103.22 (1990), which applies only to transactions that involve \$10,000 or more in currency.

68 For a discussion of "structuring," see *infra* notes 85-105 and accompanying text.

69 See 31 C.F.R. § 103.25(b)(2) (1990).

70 See *supra* notes 9-10 and accompanying text.

C. Bank Checks, Cashier's Checks, Money Orders, and Traveler's Checks

The most recent addition to the government's reporting and recordkeeping regime covers the purchases of bank checks and drafts, cashier's checks, money orders, and traveler's checks.⁷¹ This regulation mandates that whenever a financial institution issues or sells any of the instruments specified, for \$3000 or more in currency, the institution must record certain information, and verify the identity of the purchaser.⁷²

D. Exemptions from the Reporting Requirements of 31 C.F.R. § 103 (1990)

The regulatory scheme provides for exemptions from some of its reporting requirements. Those who want to launder money, under the guise of conducting a legitimate business that regularly handles large amounts of currency, may try to get an exemption from their bank, under section 103.22(b)(2). This section allows banks to exempt deposits or withdrawals of currency "from an existing account by an established depositor."⁷³ Banks do not

71 31 C.F.R. § 103.29 (1990); 31 U.S.C. § 5325 (1988). This regulation was effective as of August 13, 1990.

72 31 C.F.R. § 103.29 requires the financial institution to keep a chronological log of the covered transactions, for each calendar month. If the purchaser of a traveler's check, for example, has an account with the financial institution, that institution must record in its log the purchaser's name, account number, the date of purchase, the branch where the purchase occurred, the serial number(s) of the instrument, and the dollar amount of each of the instruments purchased in currency. 31 C.F.R. § 103.29(a)(1)(i) (1990).

In addition to the items listed above, if the purchaser does not have an account with that financial institution, the institution must log the purchaser's social security number or alien identification number; date of birth; the name, and social security number, or account number of the person on whose behalf the purchase is being made; and the payee(s) on any instruments purchased. 31 C.F.R. § 103.29(a)(2)(i) (1990). The financial institution must verify the identity of both accountholders and nonaccountholders who make these recordable purchases. 31 C.F.R. §§ 103.29(a)(1)(ii) and 103.29(a)(2)(ii) (1990).

73 31 C.F.R. § 103.22(b)(i) (1990). Banks may exempt transactions of a United States resident who operates a retail business in the United States. For a retail business to qualify for an exemption under this section, it must be a business that is paid in substantial amounts of currency. The section explicitly states that businesses that buy or sell motor vehicles, vessels, or aircraft are not eligible for exemptions under this section. *Id.*

Banks may also exempt depositors who operate businesses such as race tracks, bars, restaurants, hotels, licensed check cashing services, regularly scheduled passenger airlines, or any public utility. 31 C.F.R. § 103.22(b)(2)(ii) (1990).

have carte blanche to exempt the transactions of whatever customer they choose, however. The exempted transactions must be in amounts that the banks may "reasonably conclude" do not exceed amounts commensurate with the conduct of a lawful business of the type the customer claims to represent.⁷⁴

E. Volume of Routine Reporting

Currently, the IRS can hardly process the vast numbers of CTRs that the reporting requirements have generated.⁷⁵ Prior to 1985, financial institutions filed only a few hundred thousand CTRs each year.⁷⁶ Then, in 1985, the Treasury Department slapped the Bank of Boston with a \$500,000 civil penalty for its failure to file CTRs covering shipments of a total of \$1.16 billion in cash to banks in Switzerland and elsewhere in Europe.⁷⁷ The event received wide publicity.⁷⁸ Filings of CTRs surged to 3.6 million the following year, 1986, and continue to increase. In the first six months of 1990, financial institutions filed 4.2 million CTRs. The IRS expects the number of CTRs filed in 1990 to reach seven million.⁷⁹

F. Penalties

The government provides financial institutions with ample incentive to comply with the Treasury's reporting regulations. The maximum civil penalty for a single violation of the regulations is either \$100,000, or the amount involved in the transaction, which-

74 31 C.F.R. § 103.22(c) (1990). In addition, as of October, 1986, the exempted customer must prepare, and the bank must retain, a statement describing the customary conduct of the customer's lawful business. See 31 C.F.R. § 103.22(d) (1990) for specific information the customer must provide. The bank must also keep a centralized list of exemptions it has granted, and its reasons for granting them. 31 C.F.R. § 103.22(f) (1990).

The only other provision for exemptions in 31 C.F.R. § 103 (1990) applies to geographically targeted orders promulgated under § 103.26. See *supra* notes 60-65 and accompanying text. This provision states that a bank that receives a geographically targeted reporting order may continue to apply exemptions granted under § 103.22, but it may not grant additional or new exemptions. 31 C.F.R. § 103.26(d)(3) (1990).

75 Iida, *IRS' Kirby Braces to Fight Drugs With Electronic Data*, AMERICAN BANKER, Oct. 19, 1990, at 2.

76 Gerhardstein, *Reporting of Large Cash Transactions to IRS Surges Sharply*, AMERICAN BANKER, Aug. 27, 1990, at 8.

77 See Gartlett & Wallace, *Money Laundering: Who's Involved, How It Works, and Where It's Spreading*, BUS. WEEK, Mar. 18, 1985, at 74, 76.

78 *Id.*

79 See *supra* note 76.

ever is greater.⁸⁰ If a bank violates the requirement to maintain procedures for reporting, 31 U.S.C. § 5321 provides that "a separate violation occurs for each day the violation continues and at each office, branch, or place of business at which a violation occurs or continues."⁸¹ For a criminal violation of the reporting or recordkeeping requirements, the stakes are even higher. Criminal violation of any of the requirements can carry a fine of \$250,000 and/or five years' imprisonment.⁸² Where the government proves the elements of the defendants' underlying laundering activities,⁸³ in addition to proving the reporting violations, the

80 See 31 U.S.C. § 5321 (1988); 31 C.F.R. § 103.47 (1990).

81 31 U.S.C. § 5321 (1988).

82 31 U.S.C. § 5322 (1988); 31 C.F.R. § 103.49 (1990). These penalties do not apply to violations of 31 U.S.C. § 5315 (1988), which has its own penalty provisions. Section 5315 gives the Secretary of the Treasury authority to require reports on foreign currency transactions conducted by United States persons.

83 31 U.S.C. § 5322(b) (1990) provides for increased criminal fines and prison terms in instances where a person willfully violates the reporting and/or recording laws "while violating another law of the United States or as part of a pattern of any illegal activity involving more than \$100,000 in a 12-month period." In prosecutions of banks for violations of BSA reporting requirements, two federal circuits have held that the "pattern of illegal activity" that triggers the § 5322(b) felony enhancement provision does not have to be activity independent of the reporting violations themselves. Thus, where a financial institution violates the reporting requirements for transactions involving over \$100,000 in a twelve-month period, this series of violations can itself constitute a "pattern of illegal activity." See *United States v. Bank of New England, N.A.*, 821 F.2d 844 (1st Cir.), cert. denied, 484 U.S. 943 (1987). Furthermore, a bank's failure to report any of its reportable transactions can be sufficient to constitute a "pattern of illegal activity." *United States v. St. Michael's Credit Union*, 880 F.2d 579, 587 (1st Cir. 1989).

In *Bank of New England*, the Court of Appeals for the First Circuit concluded that to form a "pattern under the Currency and Foreign Transactions Reporting Act [the BSA], the transactions must be "repeated and related." *Bank of New England*, 821 F.2d at 853. The court said that the government might prove, *inter alia*, a common feature among the customers involved, among the forms of transfers of currency, and/or among the purposes for which the funds were used. *Id.* In *St. Michael's Credit Union*, the First Circuit affirmed the "repeated and related" standard it set out in *Bank of New England*, but said that the government met this standard by showing that the defendant credit union had filed no CTRs at all. *St. Michael's Credit Union*, 880 F.2d at 587. The court stated: "The necessary connection [among the transactions] can be shown by proving that the financial institution chronically and consistently failed to file any CTRs. By showing a consistent failure to report, the government has proven an overall relationship among the transactions. There is a pattern of not reporting." *Id.*

The penalty enhancement provision of § 5322(b) can also apply to an individual who transports currency without complying with the reporting requirements of 31 U.S.C. § 5316. Thus, where the defendant, an officer of a Panamanian airline, INAIR, agreed to transport multiple shipments of approximately \$2 million in currency per week out of the United States without reporting the shipments to the United States government, the Court of Appeals for the Eleventh Circuit found a "pattern of illegal activity" that satisfied 31 U.S.C. § 5322(d). *United States v. Valdes-Guerra*, 758 F.2d 1411, 1414-15 (11th Cir. 1985).

penalty can reach a \$500,000 fine and/or ten years' imprisonment. The regulations also provide specific penalties for "structuring" violations.⁸⁴

G. Evasive Structuring of Transactions

The very wording of the BSA's regulatory scheme suggests a way to avoid the filing of CTRs for a particular transaction. The "trigger" for the CTR requirement is a transaction involving an amount of currency greater than \$10,000. So persons who want to conduct large currency transactions without having a report filed simply break up the total amount of cash they wish to deposit or transfer into smaller components; that is, amounts of less than \$10,000. For instance, someone may make multiple purchases of cashier's checks each for under \$10,000, at different banks, or at different branches of the same bank, on one day, thus converting a large sum of currency into more portable and less conspicuous instruments.⁸⁵

Law enforcement authorities refer to this technique as "smurfing."⁸⁶ Until Congress passed the Money Laundering Control Act (MLCA)⁸⁷ in 1986, "smurfing" received inconsistent judicial treatment.⁸⁸ Some circuits held that breaking up transactions to avoid the filing of reports did not violate the BSA reporting requirements,⁸⁹ while others held that it did.⁹⁰ In *United States*

The *Valdes-Guerra* court, and the *Bank of New England* and *St. Michael's* courts, cited *United States v. Dickinson*, 706 F.2d 88 (2d Cir. 1983), as persuasive authority for their interpretations of "pattern of illegal activity." The *Dickinson* court had reasoned that "pattern of illegal activity" in former 31 U.S.C. § 1059, now 31 U.S.C. § 5322, must refer to "repeated violations of the [Bank Secrecy] Act itself, related to each other, and together totalling more than \$100,000." *Dickinson*, 706 F.2d, at 91.

84 31 U.S.C. § 5322(b) (1988); 31 C.F.R. § 103.49(2) (1990). For a discussion of "structuring" see *infra* notes 85-105 and accompanying text.

85 For a discussion of variations on the evasive structuring technique, see *supra* Welling, note 44 at 296-97. See also, e.g., *United States v. Meros*, 866 F.2d 1304 (11th Cir. 1989).

86 See, e.g., MONEY LAUNDERING ALERT July, 1989, at 12; see also Welling, *supra* note 44.

87 See *supra* note 7.

88 See Welling, *supra* note 44 at 295-96.

89 See, e.g., *United States v. Anzalone*, 766 F.2d 676 (1st Cir. 1985); *United States v. Varbel*, 780 F.2d 758 (9th Cir. 1986).

90 See, e.g., *United States v. Cook*, 745 F.2d 1311 (9th Cir. 1985), *cert. denied*, 469 U.S. 1220 (1986); *United States v. Tobon-Builes*, 706 F.2d 1092 (11th Cir. 1983) and *United States v. Thompson*, 603 F.2d 1200 (5th Cir. 1979).

v. Tobon-Builes,⁹¹ the defendants made a series of twenty-one purchases of cashier's checks at different Florida banks, using a variety of names, including false names. Over the course of two days in 1981, they divided a total of \$185,200 in cash into increments of under \$10,000 for each cashier's check they purchased—"smurfing."⁹² The Court of Appeals for the Eleventh Circuit upheld the defendants' convictions, based on 18 U.S.C. § 1001,⁹³ which prohibits anyone from concealing a material fact within the jurisdiction of any department or agency of the United States.⁹⁴ Tobon-Builes argued that, under the applicable regulation, the financial institution, not the individual, has the legal duty to disclose information to the government. But the court reasoned that Tobon-Builes' liability stemmed from his causing the financial institutions handling the transactions not to file the reports.⁹⁵ Courts of appeal in the Second and Tenth Circuits, and a district court in the Fifth Circuit, applied similar reasoning in concluding that individuals were criminally liable for structuring their transactions to avoid the reporting requirements.⁹⁶

91 *United States v. Tobon-Builes*, 706 F.2d 1092.

92 *Id.* at 1092-96.

93 18 U.S.C. § 1001 (1988). This section provides:

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

94 *Tobon-Builes*, 706 F.2d at 1096.

95 *Id.* at 1098-99. The *Tobon-Builes* court relied on the Fifth Circuit's reasoning in *United States v. Thompson*, 603 F. 2d 1200 (5th Cir. 1979), in reaching this conclusion. The *Tobon-Builes* court also emphasized that in *Thompson*, the defendant's liability "stemmed not from his duty to file a currency report but rather from his causing the financial institutions to fail to file a report." *Tobon-Builes*, 706 F.2d at 1098 (citing *Thompson*, 603 F.2d at 1201).

In addition, the *Tobon-Builes* court cited 18 U.S.C. § 2(b) (1988), which provides that a person who "willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal." *Tobon-Builes*, 706 F.2d at 1099.

96 In *United States v. Cook*, 745 F.2d 1311 (9th Cir. 1985), the defendant bungled an attempt to transfer \$90,000 in cash from one bank account to a new account in a different bank, where he planned to use a false identity in establishing the account. Cook withdrew the money from one account in increments of \$9,900 or \$9,999 without having any CTRs filed with the IRS. When he sought to re-deposit the money at different banks, bank officials became suspicious because of both the size of the deposit, \$90,000, and the fact that Cook could produce no driver's license supporting his false identity. One of the banks where he temporarily deposited the cash filed a CTR, reflect-

*United States v. Varbel*⁹⁷ represented the contrary line of cas-

ing the false name and address Cook had given.

Eventually, when Cook re-deposited the \$90,000 at yet another bank, using his real name, he was indicted for, *inter alia*, violations of 31 U.S.C. § 5313, which requires routine reporting of currency transactions over \$10,000, and its implementing regulations. The *Cook* court rejected Cook's argument that since, pursuant to 31 U.S.C. § 5313, an individual is under no duty to accurately file a CTR, Cook's misrepresenting his identity on the CTR that the bank filed could not be a violation of § 5313. The *Cook* court cited *Thompson and Tobon-Builes*. *Cook*, 745 F.2d at 1315. The court held that individuals can violate § 5313 where they knowingly and willfully cause a financial institution to fail to file an accurate CTR. *Id.* The *Cook* court, like the *Tobon-Builes* court, noted that 18 U.S.C. § 2(b) supported this holding. *See supra* note 95, for the application of 18 U.S.C. § 2(b) in the transaction reporting context.

The United States Court of Appeals for the Second Circuit also held that an individual could be liable for causing a financial institution to fail to file a CTR. *United States v. Heyman*, 794 F.2d 788 (2d Cir. 1986). The defendant in *Heyman* was an account executive at Merrill Lynch, who opened several joint and individual accounts for a client in the client's name, and in the names of the client's relatives. Heyman received a briefcase containing \$70,000 in cash from the client. He then broke the \$70,000 into sub-\$10,000 sums. Heyman deposited each of these smaller increments into the several accounts he had opened for the client. The following day, Heyman instructed that all of the money be transferred from these accounts into a single joint account Heyman had established in the name of his client and the client's wife. The *Heyman* court agreed, as the government had conceded, that Heyman himself did not have a legal duty to file CTRs, in his capacity as an account executive at Merrill Lynch. Nevertheless, the court held that application of 18 U.S.C. § 2(b) made Heyman criminally liable for causing Merrill Lynch to fail to file CTRs covering his client's transactions. *Id.* at 791-92. The *Heyman* court distinguished cases such as *United States v. Varbel*, 780 F.2d 758 (9th Cir. 1986). *See infra* notes 97-102 and accompanying text. In *Varbel*, the Ninth Circuit held that the defendant's structuring his transactions did not violate the BSA's reporting requirements. The *Heyman* court noted that in the Ninth Circuit case, the defendant had conducted sub-\$10,000 transactions at several different banks, none of which alone could have violated the BSA by not filing a CTR. In contrast, Merrill Lynch would have been required to file a CTR for cumulative deposits in a single day. Thus, it reasoned, Heyman's actions caused Merrill Lynch to violate the Bank Secrecy Act (referring to the Act by its official name, the Currency and Foreign Transactions Reporting Act). *Heyman*, 794 F.2d at 792.

In *United States v. Sanchez-Vasquez*, 585 F. Supp. 990 (N.D. Ga. 1984), the defendants argued that 31 C.F.R. § 103.11 defines each branch of a bank as a separate financial institution. Thus, they claimed, no single financial institution with whom they dealt in their multiple purchases of cashier's checks at various branches of the same bank had a duty to file a CTR, because each transaction at a particular bank branch involved an amount less than \$10,000. The court rejected this interpretation of the reporting laws. The court said that the applicable statute, 31 U.S.C. § 5312, and the corresponding regulation, 31 C.F.R. § 103.11, must be read together in order to define "financial institution" correctly. The court found that "financial institution," correctly interpreted, meant a bank, including each of its branches. Thus, a bank must file a CTR if there are multiple transactions at its different branches, and the total of these transactions exceeds \$10,000. *Sanchez-Vasquez* 585 F. Supp. at 993. The *Sanchez-Vasquez* court then cited *Tobon-Builes*, 706 F.2d 1092 (11th Cir. 1983), without further elaboration, in holding that the defendants could be liable under the BSA for their evasive structuring of transactions.

97 *United States v. Varbel*, 780 F.2d 758 (9th Cir. 1986): *See also Money Dealings*

es. *Varbel* stemmed from an FBI sting operation in which a government informant and an undercover FBI agent posed as cocaine dealers seeking to launder narcotics proceeds. The FBI received information that a Phoenix attorney, Duane Varbel, was laundering money. Varbel set up a complex scheme⁹⁸ to launder "cocaine cash" for his "clients." The purported clients were actually undercover agents. One step in Varbel's plan was to purchase cashier's checks at various California banks, each in an amount under \$10,000. The Court of Appeals for the Ninth Circuit reversed Varbel's convictions for violation of 18 U.S.C. § 1001.⁹⁹ The court held that because Varbel had no legal duty to inform the banks with whom he dealt of the nature of his currency transactions,¹⁰⁰ he could not be guilty of a concealment violation under § 1001. The court also said Varbel had not aided or abetted anyone in the commission of a crime, and thus he also had not violated 18 U.S.C. § 2.¹⁰¹ The *Varbel* court commented: "If Congress or the Secretary wish to impose a reporting duty on financial institution customers, they must do so in clear, unambiguous language. We cannot impose the duty by implication."¹⁰²

Congress responded to this challenge. The current version of the reporting statute explicitly makes it a crime to "structure" transactions in order to evade the reporting requirement of 31 U.S.C. § 5313 (a).¹⁰³ The reporting statute provides that no per-

Ruled Not Illegal Laundering, L.A. Times, Feb. 11, 1986, at B3, col. 4.

98 Varbel's plan to handle his client's "drug money" included physically transporting cash out of the United States to the Cayman Islands, and then forming a Caymanian corporation, called Anderex. Anderex, an offshore investment company, then opened an account at Intercontinental Bank in the Cayman Islands. Next, Varbel's laundering associates in the United States took \$50,000 of what they believed to be "drug cash" to various banks around Irvine, California and purchased cashier's checks there, in amounts less than \$10,000, but totaling \$50,000. The checks would eventually be transferred to the Anderex account in the Cayman Islands. From there, the funds would be returned to the "drug dealer" in the form of a bank loan. *Varbel*, 780 F.2d at 759.

99 As in *Tobon-Builes*, the government charged the defendant with a "concealment violation" under 18 U.S.C. § 1001 (1988). See *supra* notes 93-95.

100 *Varbel*, 780 F.2d at 762. The court also emphasized that only financial institutions had a duty to file reports.

101 *Id.* The court stated that the banks themselves had committed no crime in failing to file the CTRs, because there was no evidence in the record that the banks had knowledge of the manner in which the cashier's checks involved were purchased. Therefore, Varbel could not be liable for aiding or abetting them in commission of a crime under 18 U.S.C. § 2 (1988). See *supra* note 95 for the pertinent language of § 2.

102 *Varbel*, 780 F.2d at 762-63.

103 See 31 U.S.C. § 5324 (1988); 31 C.F.R. § 103.53 (1990). Additional amendments Congress made to the Money Laundering Control Act in 1988 also make evasive structuring more difficult. These additions, 31 U.S.C. §§ 5325-5326, require banks to

son shall "structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions."¹⁰⁴ This provision widely expands the criminal liability of would-be money launderers.¹⁰⁵ In particular, it settles the question of whether criminal liability attaches to evasive conduct, where the bank customer uses several different banks in the course of breaking a large sum of cash into amounts of less than \$10,000. Would-be smurfs must find more imaginative techniques to thwart the provisions of the Bank Secrecy Act and the Money Laundering Control Act.

IV. PROPOSALS FOR BLANKET RECORDKEEPING OF WIRE TRANSFERS

The Treasury Department has proposed new rules to amend the current versions of 31 C.F.R. § 103.25, the foreign financial agencies targeting provision, and 31 C.F.R. § 103.33, which sets out rules for mandatory recordkeeping, as distinguished from reporting, by financial institutions. In addition, the Department has proposed several changes to section 103.11, the recordkeeping and reporting regulations' "definitions" section.¹⁰⁶

The proposed amendments to section 103.25 would expand the recordkeeping requirement under that regulation to include, in the case of a bank,¹⁰⁷ all funds transfers, and in the case of financial institutions other than a bank, all transmittals or receipts of funds by the institution.¹⁰⁸ There would be an exception from the recordkeeping requirement for domestic bank-to-bank trans-

verify the identity of persons who purchase certain instruments for over \$3000 in cash, and permit the Secretary of the Treasury to "target" particular types of institutions or geographic areas for special reporting requirements. See *supra* notes 50-65 and accompanying text. See also Welling, *supra* note 44, n.104 at 304.

104 31 U.S.C. § 5324(3) (1988).

105 Section 5324 has already survived a "vagueness" challenge at the district court level. See *United States v. Scanio*, 705 F. Supp. 768 (W.D.N.Y. 1988). See also Welling, *supra* note 44 at 323-24. Professor Welling notes that "structuring" had acquired a common law meaning before § 5324 was enacted.

106 See 55 Fed. Reg. 41,696 (1990) (proposed Oct. 15, 1990).

107 The current version of 31 C.F.R. § 103.11(b) (1990) defines "bank" to include, *inter alia*, each agent, agency, branch, or office within the United States of any person doing business as a commercial bank; a private bank; a savings and loan association; a savings bank or other thrift institution; a credit union; and a bank organized under foreign law.

108 See 55 Fed. Reg. 41,696 at 41,700-01 (1990). For the text of the proposed regulation, see *id.* at 41,704 (proposing the new rule to be codified at 31 C.F.R. § 103.33(f)(1)(i)) (proposed Oct. 15 1990).

fers, when these transfers are for the banks' own accounts.¹⁰⁹

The current version of the general recordkeeping requirement, 31 C.F.R. § 103.33, requires financial institutions to keep a "record" of the advice, instruction, or request for all international funds transfers over \$10,000.¹¹⁰ It does not specify what particular items of information the financial institution must record, however. Inconsistent recording practices among financial institutions, which in turn yielded incomplete information to the Treasury Department, have made it difficult for the Department to effectively use its targeting authority under section 103.25.¹¹¹ The proposed amendments to section 103.33¹¹² specify particular items of information the financial institutions must keep. The recorded items must include the identity and account number of the originator of a payment order, the amount of the order, the date of the transaction, the identity of the beneficiary's bank, the beneficiary's account number, and the name of the person on whose behalf the funds transfer was originated.¹¹³ Originator banks, beneficiary banks, and intermediary financial institutions must keep records of these transactions.

Treasury's proposed changes to section 103.33 also specify particular procedures financial institutions should follow in verifying the identity of persons conducting the recordable transactions.¹¹⁴ A financial institution should take special care in conducting transactions with persons who do not hold a deposit account at that particular institution.¹¹⁵ Parallel recordkeeping and identification verification requirements¹¹⁶ would apply to "non-bank transmitters of funds," such as check cashers, all of which come under the definition of "financial institutions," in the BSA regulatory scheme.¹¹⁷ The proposals do not give the nonbank institutions an exemption from reporting funds transfers between

109 55 Fed. Reg. 41,696, at 41,704 (1990) (proposing the new rule to be codified at 31 C.F.R. § 103.33(e)(4) (proposed Oct. 15, 1990).

110 31 C.F.R. § 103.33(b)-(c) (1990).

111 Some banks systematically recorded information in great detail, while others kept records haphazardly. See 55 Fed. Reg. 41,696 at 41,702 (1990).

112 55 Fed. Reg. 41,696 at 41,703-04 (1990) (proposing the new rule to be codified at 31 C.F.R. § 103.33) (proposed Oct. 15, 1990).

113 *Id.*

114 *Id.*

115 See *id.* at 41,703 (proposing the new rule to be codified at 31 C.F.R. § 103.33(e)(1)(iii)(B)) (proposed Oct. 15, 1990).

116 See *supra* note 108.

117 See 31 C.F.R. § 103.11 (i) (1990), and *supra* note 41.

themselves, for their own accounts, however.

Although this version of the Treasury Department's proposals is less onerous than the previous set of proposals the Treasury made in 1989,¹¹⁸ bankers have greeted it with alarm.¹¹⁹ The American Bankers' Association has estimated the annual cost of compliance with these new wire transfer recording proposals at \$110 million.¹²⁰ The bankers have an obvious interest in keeping such an estimate high. But the Treasury Department, too, has published some of the government's own estimates of the burden the wire transfer recording proposals will impose on domestic financial institutions. The Department's estimate of the "total annual reporting and recordkeeping burden" was 7.5 million hours.¹²¹

This burden, whether expressed in dollars or work-hours, arises partly from the fact that proposed regulations for reporting on wire and electronic funds transfers do not include a monetary threshold. No matter what the amount of the transfer, the financial institution(s) involved must record the specified information.¹²² This may prevent the government from having to fight the "structuring" battle¹²³ all over again in the wire and electronic funds transfer context, but it means the financial institutions must keep detailed records of many more transactions than they now must report or record.

In the "Supplementary Information" that accompanied its proposal,¹²⁴ the Treasury Department refused to rule out the possibility of requiring routine reporting of international funds transfers. Yet, the same Treasury Department announcement concedes that "in many situations, it is not apparent whether the funds involved in a funds transfer are domestic or international in origin."¹²⁵ The Treasury Department has determined, however, that "there is law enforcement value in having records of all trans-

118 See 54 Fed. Reg. 45,769 (1989).

119 See, e.g., *Treasury Issues Wire Transfer Proposal as Bankers Blast Latest Industry Burden*, 55 Banking Rep. (BNA) No. 16, at 549 (Oct. 22, 1990).

120 *Id.*

121 The Treasury Department's official announcement of the proposed rules included estimates of the recordkeeping burden the rules would impose on the affected financial institutions. See 55 Fed. Reg. 41,696 at 41,702 (1990).

122 See 55 Fed. Reg. 41,696 (1990).

123 See *supra* notes 85-105 and accompanying text.

124 See 55 Fed. Reg. 41,696 at 41,697.

125 *Id.*

fers.”¹²⁶ Presumably, this statement stems from the idea that by requiring financial institutions to keep records of all wire or electronic funds transfers, law enforcement authorities can ensure that particular records will be available, should the need for these records arise in the course of a particular investigation. The proposed regulations, like all the recordkeeping regulations of 31 C.F.R. § 103, which implements the Bank Secrecy Act, require that financial institutions keep records of a particular funds transfer for at least five years after the transfer date.¹²⁷ The financial institution must keep the records in a such a form that they are retrievable by the financial institution customer’s name, or account number.¹²⁸

Insofar as the object of the proposed regulations is to impose uniformity on financial institutions’ recordkeeping practices, the regulations may prove valuable to law enforcement. Yet, major banks already keep records of all wire and electronic funds transfers that they handle.¹²⁹ In addition, the government would probably be unable to make effective use of the recorded information. As this Note has mentioned,¹³⁰ the government already has trouble processing the high volume of CTRs that financial institutions now file, pursuant to current Treasury regulations. Searching for the money laundering “needle” in the “haystack” of records of all international wire and electronic funds transfers is not likely to be an effective method of identifying money laundering activity.

More promising is the suggestion, which the Treasury Department mentioned in announcing the proposed new rules,¹³¹ that it will require reporting only of “suspicious transfers,” identified according to a “suspicious transaction profile.”¹³² This approach

¹²⁶ *Id.*

¹²⁷ 55 Fed. Reg. 41,696 at 41,703-04 (1990) (proposing the new rule to be codified at 31 C.F.R. §§ 103.33(e)(1)(iii)(3) and 103.33(f)(1)(i)(3)) (proposed Oct. 15, 1990).

¹²⁸ *Id.*

¹²⁹ For example, Citibank, N.A., Chemical Bank, Continental Bank, N.A., and Wells Fargo Bank all keep records of the details of wire and electronic transfers. Telephone interviews with wire transfer and electronic funds transfer department employees. (Mar. 14-15, 1991).

¹³⁰ See *supra* notes 75-80 and accompanying text.

¹³¹ See 55 Fed. Reg. 41,696 at 41,697 (1990).

¹³² Precisely what constitutes a “suspicious transaction” varies according to whether the customer conducts a currency transaction, or a funds transfer. Examination of some of the evasive structuring cases indicates what might make a particular currency transaction “suspicious.” The indications include multiple purchases of cashier’s checks for large amounts of cash, in amounts of just under \$10,000, or large short-term deposits of cur-

would strike the best balance between the law enforcement interests at stake, and the economic interests that financial institutions and their customers have in keeping funds transfers flowing smoothly and as inexpensively as possible. Tailoring reporting requirements to a suspicious transfer profile would reduce the number of transactions financial institutions must report, thus lessening both the banks' burden and that of the government in processing and analyzing the reports.

Government experts on financial crimes should assume the burden of developing the "suspicious transfer" profile. This burden forces the government to decide, and to enunciate, its exact concerns to financial institutions, rather than leaving them to guess at what they should consider to be "suspicious," and thus reportable, or having the financial institutions record or report all wire and electronic transfers. Applying a suspicious transaction profile to a funds transfer is arguably more difficult than applying it to a currency transaction.¹³³ Yet, at least, banks can be alert to patterns of suspicious activity, and report transfers that fit such patterns. These patterns might include a surge of transfers to financial institutions in a particular offshore money laundering "hot spot," previously identified by the government, or a high volume of activity by a customer the bank knows little about. Publishing suspicious transfer profiles to banks may also encourage banks to report suspicious activity on their own initiative, even where the activity that attracted bank officials' attention does not strictly conform to the Treasury's profile of what must be reported.¹³⁴

Exemptions from recording and reporting also should be part of the Treasury Department's plan for addressing wire and

rency that do not seem commensurate with the nature of the depositor's business.

Indications of suspicious wire transfers include the presence of large currency deposits prior to an outgoing transfer, or the existence of an incoming transfer followed by issuance of a cashier's check. It will be more difficult to determine whether a particular funds transfer, as opposed to a currency transaction, is "suspicious" or not, before the transfer is made, because the funds transfer system is so highly automated, and it does not necessarily include manual review of payment orders. Delaying a transfer in order to examine and verify information would disrupt international payments. Many financial institutions have indicated that their internal computer systems are not integrated, and thus they cannot determine what account activity preceded a particular funds transfer. See 55 Fed. Reg. 41,696, at 41,697-98 (1990).

133 See *supra* note 132.

134 For an example, see *supra* note 29 and accompanying text. See also *infra* note 145 and accompanying text.

electronic funds transfers. Allowing exemptions for certain broad classes of transactions would be consistent with the goal of reducing recordkeeping and processing, in order to limit the cost of the Treasury Department's anti-laundering measures. Exempted transfers could include transfers by large, publicly traded corporations, public utilities, and similar entities that routinely conduct high-volume transfers.¹³⁵

The Treasury Department should also consider imposing a monetary threshold on transfers for which banks must keep detailed records. If the threshold were low enough, it would eliminate useless paperwork for both banks and the government, without compromising the goal of preventing evasive structuring. Small, one-time consumer transactions, or emergency transmissions of funds to a stranded traveler, in amounts under \$1000, for example, would not have to be reported, or recorded in detail. Yet, a would-be money launderer attempting to divide a large amount of money into such small increments would have to conduct so many transactions, with such frequency, that the launderer would probably attract the attention of bank officials.

An approach to the electronic and wire transfer problem that incorporates these reasonable limits would eliminate much of the unnecessary recordkeeping that the current proposals¹³⁶ make inevitable.¹³⁷ This approach would limit the danger of crippling the international banking system by slowing down all wire and electronic funds transfers.¹³⁸ Reasonable limits on recordkeeping, and reporting only those funds transfers that fit a defined "suspicious transfer" profile, would conform the government's strategy to the experience of both bankers and law

135 See 55 Fed. Reg. 41696, at 41,697 (1990).

136 *E.g.*, the proposals that the Treasury Department published in October, 1990. See *supra* note 110. The period for public comment on the October, 1990, proposals closed on January 15, 1991. As of January 10, 1991, the Treasury had received over 300 comments on these proposed rules and expected that the proposed requirements will be amended again. Telephone interview with Linda Noonan, Senior Counsel for Financial Enforcement, Office of the Assistant General Counsel of the Department of the Treasury (Jan. 10, 1991).

137 See *supra* note 36 and accompanying text. The vast volume of international transfers, and the fact that most of these represent legitimate business transactions, means that most of the records that financial institutions would be required to make, under the Treasury Department's electronic funds transfer proposals, would never have any law enforcement value.

138 American bankers are not the only ones concerned about the effects of slowing down electronic funds transfers. See, *e.g.*, Debusmann, *U.S. Wants Europe to Fight Harder in International Drug War*, REUTERS LBR. REP., Feb. 26, 1990.

enforcement authorities who have investigated money laundering operations.

As this Note mentioned,¹³⁹ the La Mina information came from a curious courier company employee, and an alert banker. Cash surpluses at Federal Reserve Banks also provide an indication of where money laundering can be occurring.¹⁴⁰ In *Varbel*,¹⁴¹ an anonymous tip, followed by an undercover investigation, exposed Duane Varbel's money laundering activities. Publicity surrounding the Bank of Credit and Commerce International (BCCI)¹⁴² and La Mina cases has made both bankers and the general public more aware of money laundering activity. Banks' own "know your customer" policies can prevent "dirty money" from getting into the banking system in the first place.¹⁴³ Both bankers and law enforcement authorities have said that this "choke point," the point at which illegal-source cash first enters the banking system, is the crucial point for detecting and prevent-

139 For a discussion of La Mina, see *supra* notes 28-29, and accompanying text.

140 For a discussion of how Federal Reserve Bank surpluses can indicate money laundering activity, see *supra* note 64.

141 *United States v. Varbel*, 780 F.2d 758 (9th Cir. 1986). For a discussion of *Varbel*, see *supra* notes 97-102 and accompanying text. Undercover operations continue to be successful at catching those who try to launder illegal-source cash. Recent money laundering indictments in Miami resulted from a DEA investigation that connected drug trafficking activities to attempts to launder approximately \$65 million. Federal agents set up sham "money laundering" operations as part of their investigation. *U.S. Jury Indicts 43 in Money Laundering*, N.Y. Times, Mar. 16, 1991, at A9, col. 6.

142 BCCI pleaded guilty in January, 1990, to money laundering charges. In July, 1990, six BCCI bankers, including Manuel Noriega's personal banker, were convicted of conspiracy to launder \$32 million in cocaine profits for Colombia's Medellin cartel. It was the first time a United States court convicted international bankers under United States money laundering laws. BCCI was owned by interests in Abu Dhabi, had its headquarters in Luxembourg, and had 400 branches in seventy-three countries. *Noriega Banker, 5 Others Guilty in Cash Laundering*, L.A. Times, July 30, 1990, at A17, col.1.

143 As the term suggests, the idea behind a "know-your-customer" policy is that banks should make an effort to be familiar with their customers, and their customers' business, so that the bank does not become the unwitting instrument of money launderers. See, e.g., Morley, *Suspicious Transactions Pose Dilemma for Banks*, MONEY LAUNDERING ALERT, Jan. 1990, at 5. Charles Morley is a former IRS and Senate investigator who has produced a videotape training series for banks, entitled "Dirty Money." See also *Wells Pioneers Detection System*, *supra* note 29. Bankers do not want to intrude on the privacy of their customers. John Byrne, the general legislative counsel for the American Bankers Association, has commented, "We're walking a fine line. We're trying to work with the Government, but we're not policemen." Labaton, *Fighting the Battle of Dirty Money*, N.Y. Times, Aug. 27, 1989, at C1, col. 2. Yet the "know-your-customer" approach has the advantage, for bankers, of allowing them to apply their own professional judgment in order to keep dirty money out of the banking system, rather than being controlled entirely by government directives for this purpose.

ing attempted money laundering.¹⁴⁴

V. CONCLUSION

Banks have demonstrated their image-consciousness and their desire to avoid being associated with money laundering, and the drug trafficking that is often behind it.¹⁴⁵ Thus, bankers have a strong incentive to comply with the recording and recordkeeping requirements that are now in place, and to monitor their own individual institutions to avoid being used by money launderers. If the government continues its aggressive investigation and prosecution of money laundering activity, the incentive to avoid criminal liability and negative publicity should be sufficient to counter banks' financial incentive to accept short-term deposits of large amounts of cash without asking too many questions. Guidance from law enforcement as to what the government deems to be "suspicious," combined with the applied expertise of banking professionals, can help keep dirty money out of the system. The answer to the money laundering problem lies not with more blanket recording and reporting requirements, but with "smarter," targeted regulations, and with the encouragement of "know your customer" policies.

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144 See, e.g., Labaton, *Fighting the Battle of Dirty Money*, *supra* note 143.

145 See, e.g., Hilsher, *Know the Telltale Signs of Laundering*, *AMERICAN BANKER*, July 24, 1989, at 24. Gerald L. Hilsher is an attorney who previously served as the Treasury Department's deputy assistant secretary for law enforcement. He notes that in the wake of "Operation C-Chase," which led to the conviction of BCCI on money laundering charges, the Treasury Department served subpoenas on more than forty United States banks. *Id.* Hilsher states that despite Treasury Department assurances that the subpoenas in no way indicated criminal culpability by the banks holding the records, the press reported the service of subpoenas and the seizure of bank accounts in a way that suggested complicity with the laundering defendants. *Id.*

The broad sweep of money laundering investigations is conducive to dramatic headlines. See, e.g., Frantz, *IRS Subpoenas Records of California Banks in Broad Money-Laundering Probe*, *L.A. Times*, Oct. 4, 1988, at D1, col. 4. See also Fialka & Truell, *Rogue Bank: BCCI Took Deposits from Drugs, Noriega, and Now is in the Red*, *Wall St. J.*, May 3, 1990, at A1, col 6.